

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROMONDA AUDRAY LEWIS,

Defendant-Appellant.

UNPUBLISHED

June 12, 2007

No. 269200

Wayne Circuit Court

LC No. 05-010542-01

Before: Fitzgerald, P.J., and Sawyer and O'Connell, JJ.

MEMORANDUM.

A jury convicted defendant of armed robbery, MCL 750.529, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced as an habitual offender, fourth offense, to 12 to 25 years' imprisonment for armed robbery, one to five years' imprisonment for felon in possession, and two years' imprisonment for felony-firearm. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first argues that the trial court erred in admitting evidence of his prior larceny conviction as impeachment evidence for purposes of MRE 609. While we agree that the trial judge mixed the analysis of MRE 609(a)(1) and (a)(2) and failed to understand her discretion in excluding such evidence, any error was harmless. *People v Reed*, 172 Mich App 182, 188; 431 NW2d 431 (1988). Contrary to defendant's assertion, there was no mention of the fact that defendant's prior conviction was for larceny. The jury was simply apprised that defendant had been convicted of a felony involving theft or dishonesty, a matter that had already been stipulated to for purposes of the felon in possession charge. The trial court also instructed the jury that defendant's prior conviction was to be used to judge his credibility and not as evidence of his guilt. Juries are presumed to follow the trial court's instruction. *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998). Therefore, any potential for misuse of the evidence was negated by the trial court's instruction.

Defendant next argues that the trial court erred in allowing the prosecution to present evidence that defendant tried to sell the storeowner a shotgun just two day before the robbery. The trial court properly concluded that this was not a MRE 404(b) issue. Evidence is not subject to MRE 404(b) analysis merely because it discloses a bad act; bad acts can be relevant as substantive evidence, admissible under MRE 401, without regard to MRE 404. *People v VanderVliet*, 444 Mich 52, 64; 508 NW2d 114 (1993), mod 445 Mich 1205 (1994); *People v*

Houston, 261 Mich App 463, 468-469; 683 NW2d 192 (2004), aff'd 473 Mich 399 (2005). The evidence was relevant in showing that defendant had the ability to commit the crime and in showing that defendant had a motive to commit the crime, that is, he needed money. Notable was the fact that defendant readily admitted that he attempted to sell the storeowner a shotgun. He claimed that he did so as an intermediary. The jury was free to disbelieve defendant's version of the events.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ David H. Sawyer

/s/ Peter D. O'Connell